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9 HTC Corporation and HTC America, Inc.

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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 HTC CORPORATION, HTC
AMERICA, INC.,

15 Plaintiffs,
16

17 v.

18 ACACIA RESEARCH
CORPORATION, SAINT
19 LAWRENCE COMMUNICATIONS
LLC,

20 Defendants.
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Case No. 8:15-CV-00378 CJC (DFMx)

**HTC'S *EX PARTE* APPLICATION
FOR LEAVE TO FILE SURREPLY
TO ST. LAWRENCE'S MOTION
TO DISMISS OR TRANSFER**

Action Filed: March 9, 2015
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Civil Local Rule 7-10 and 7-19, plaintiffs HTC Corporation and HTC America, Inc. (“HTC”) respectfully request leave to file a short surreply and supporting evidence to address two discrete factual assertions made for the first time in the reply brief filed by defendant Saint Lawrence Communications LLC (“SLC”) in support of its Motion To Dismiss or, in the Alternative, Transfer to the Eastern District of Texas.

SLC’s reply brief bears little resemblance to a proper “reply” brief. It makes numerous new arguments and attaches declarations and exhibits more voluminous than those submitted with its opening brief. HTC accordingly requests leave to file the attached two-page surreply brief, along with the accompanying declarations of Eddie Choy, Chris Owen, and Paul Brown, to address the following factual representations made for the first time in SLC’s reply brief: (1) that relevant Qualcomm witnesses are located in Texas and North Carolina; and (2) that SLC told HTC at a January 23, 2015 meeting that SLC would immediately file suit against HTC if settlement negotiations broke down or reached an impasse. Neither of these representations were made in SLC’s opening brief, and as explained in the proposed surreply, they are both inaccurate.

This Court has discretion under Civil Local Rule 7-10 to grant leave to file a surreply brief and supporting evidence. *See Chow v. Neutrogena Corp.*, No. CV 12-04624 R(JCx), 2013 WL 5629777, at *1 (C.D. Cal. Jan. 22, 2013). “Because it is not equitable to allow a party to withhold substantial and material evidence and argument from its moving papers only to submit it to the reply to which the opposing party is not afforded an opportunity to respond,” *id.*, this Court should grant leave to file the attached surreply brief.

Alternatively, the Court should refuse to consider the matters presented for the first time in SLC’s reply brief. *See, e.g., Olenicoff v. UBS AG*, No. SACV 08-1029 AG (RNBx), 2010 WL 8530286, at *31 (C.D. Cal. Mar. 16, 2010) (“A district

1 court may refuse to consider new arguments submitted for the first time in a reply if
 2 the arguments should have been presented with the opening brief.”). As such, if
 3 this Court does not permit HTC to further respond, the new assertions, facts, and
 4 arguments raised for the first time by SLC should not be considered by the Court in
 5 deciding the pending motion filed by SLC.

6 On September 3, 2015, the parties met and conferred by telephone regarding
 7 this *ex parte* application. Defendant indicated it would oppose this *ex parte*
 8 application.¹

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 10 Dated: September 3, 2015

Respectfully submitted,
 COOLEY LLP

12 By: /s/ Heidi L. Keefe

13 Attorneys for Plaintiffs
 14 HTC Corporation and HTC America, Inc.

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 26 ¹ Pursuant to Local Rule 7-19 HTC provides the following contact information for
 27 Defendant’s counsel: Foster C. Johnson (fjohnson@azalaw.com), Alisa A. Lipski
 28 (alipski@azalaw.com), Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C.,
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DECLARATION OF PHILIP MAO

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3 1. I am an attorney duly licensed to practice law in the State of
4 California. I am an attorney with Cooley, LLP, counsel in this case for plaintiffs
5 HTC Corporation and HTC America, Inc. (jointly, "HTC"). I have personal
6 knowledge of the following, and if called to testify, could and would testify to the
7 contents of this declaration.

8 2. On September 3, 2015, the parties met and conferred by telephone
9 regarding this *ex parte* application. Defendant indicated it would oppose this *ex*
10 *parte* application.

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12 I declare under penalty of perjury that the foregoing is true and correct.
13 Signed this 3rd day of September, 2015 at Palo Alto, California.

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Philip Mao

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